

1-1 By: Smith of Tarrant, et al. H.B. No. 51  
1-2 (Senate Sponsor - Zaffirini)  
1-3 (In the Senate - Received from the House May 13, 2005;  
1-4 May 16, 2005, read first time and referred to Committee on Criminal  
1-5 Justice; May 20, 2005, reported favorably, as amended, by the  
1-6 following vote: Yeas 4, Nays 0; May 20, 2005, sent to printer.)

1-7 COMMITTEE AMENDMENT NO. 1 By: Whitmire

1-8 Amend House Bill No. 51 as follows:

1-9 (1) In Section 1, Subsection (d), (page 1, line 25), strike  
1-10 "~~Article 67011-1, Revised Statutes, as that law existed before~~  
1-11 ~~September 1, 1994, Article 67011-2, Revised Statutes, as that law~~  
1-12 ~~existed before January 1, 1984, Section 19.05(a)(2), as that law~~  
1-13 ~~existed before September 1, 1994, or~~".

1-14 (2) In Section 1, Subsection (d), (page 1, line 29), after  
1-15 "49.08" insert "that occurs on or after September 1, 1994,"

1-16 A BILL TO BE ENTITLED  
1-17 AN ACT

1-18 relating to the punishment prescribed for and conditions of  
1-19 community supervision imposed on certain persons who commit  
1-20 intoxication offenses.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 49.09(d), Penal Code, is amended to read  
1-23 as follows:

1-24 (d) For the purposes of this section, a conviction for an  
1-25 offense under Article 67011-1, Revised Statutes, as that law  
1-26 existed before September 1, 1994, Article 67011-2, Revised  
1-27 Statutes, as that law existed before January 1, 1984, Section  
1-28 19.05(a)(2), as that law existed before September 1, 1994, or  
1-29 Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08 ~~[that~~  
1-30 ~~occurs on or after September 1, 1994,~~] is a final conviction,  
1-31 whether the sentence for the conviction is imposed or probated.

1-32 SECTION 2. Section 13(i), Article 42.12, Code of Criminal  
1-33 Procedure, is amended to read as follows:

1-34 (i) If a person convicted of an offense under Sections  
1-35 49.04-49.08, Penal Code, is placed on community supervision, the  
1-36 court may require as a condition of community supervision that the  
1-37 defendant have a device installed, on the motor vehicle owned by the  
1-38 defendant or on the vehicle most regularly driven by the defendant,  
1-39 that uses a deep-lung breath analysis mechanism to make impractical  
1-40 the operation of the motor vehicle if ethyl alcohol is detected in  
1-41 the breath of the operator and that the defendant not operate any  
1-42 motor vehicle that is not equipped with that device. If it is shown  
1-43 on the trial of the offense that an analysis of a specimen of the  
1-44 person's blood, breath, or urine showed an alcohol concentration  
1-45 level of 0.15 or more at the time the analysis was performed, or if  
1-46 the person is convicted of an offense under Sections 49.04-49.06,  
1-47 Penal Code, and punished under Section 49.09(a) or (b), Penal Code,  
1-48 or of a second or subsequent offense under Section 49.07 or 49.08,  
1-49 Penal Code, and the person after conviction of either offense is  
1-50 placed on community supervision, the court shall require as a  
1-51 condition of community supervision that the defendant have the  
1-52 device installed on the appropriate vehicle and that the defendant  
1-53 not operate any motor vehicle unless the vehicle is equipped with  
1-54 that device. Before placing on community supervision a person  
1-55 convicted of an offense under Sections 49.04-49.08, Penal Code, the  
1-56 court shall determine from criminal history record information  
1-57 maintained by the Department of Public Safety whether the person  
1-58 has one or more previous convictions under Sections 49.04-49.08,  
1-59 Penal Code, or has one previous conviction under Sections  
1-60 49.04-49.07, Penal Code, or one previous conviction under Section  
1-61 49.08, Penal Code. If it is shown on the trial of the offense that  
1-62 an analysis of a specimen of the person's blood, breath, or urine

2-1 showed an alcohol concentration level of 0.15 or more at the time  
 2-2 the analysis was performed, or if the court determines that the  
 2-3 person has one or more such previous convictions, the court shall  
 2-4 require as a condition of community supervision that the defendant  
 2-5 have that device installed on the motor vehicle owned by the  
 2-6 defendant or on the vehicle most regularly driven by the defendant  
 2-7 and that the defendant not operate any motor vehicle unless the  
 2-8 vehicle is equipped with the device described in this subsection.  
 2-9 The court shall require the defendant to obtain the device at the  
 2-10 defendant's own cost before the 30th day after the date of  
 2-11 conviction unless the court finds that to do so would not be in the  
 2-12 best interest of justice and enters its findings on record. The  
 2-13 court shall require the defendant to provide evidence to the court  
 2-14 within the 30-day period that the device has been installed on the  
 2-15 appropriate vehicle and order the device to remain installed on  
 2-16 that vehicle for a period not less than 50 percent of the  
 2-17 supervision period. If the court determines the offender is unable  
 2-18 to pay for the device, the court may impose a reasonable payment  
 2-19 schedule not to exceed twice the period of the court's order. The  
 2-20 Department of Public Safety shall approve devices for use under  
 2-21 this subsection. Section 521.247, Transportation Code, applies to  
 2-22 the approval of a device under this subsection and the consequences  
 2-23 of that approval. Notwithstanding the provisions of this section,  
 2-24 if a person is required to operate a motor vehicle in the course and  
 2-25 scope of the person's employment and if the vehicle is owned by the  
 2-26 employer, the person may operate that vehicle without installation  
 2-27 of an approved ignition interlock device if the employer has been  
 2-28 notified of that driving privilege restriction and if proof of that  
 2-29 notification is with the vehicle. This employment exemption does  
 2-30 not apply, however, if the business entity that owns the vehicle is  
 2-31 owned or controlled by the person whose driving privilege has been  
 2-32 restricted. A previous conviction may not be used for purposes of  
 2-33 restricting a person to the operation of a motor vehicle equipped  
 2-34 with an interlock ignition device under this subsection if:

2-35 (1) the previous conviction was a final conviction  
 2-36 under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, Penal  
 2-37 Code, and was for an offense committed more than 10 years before the  
 2-38 instant offense for which the person was convicted and placed on  
 2-39 community supervision; and

2-40 (2) the person has not been convicted of an offense  
 2-41 under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08 of that  
 2-42 code, committed within 10 years before the date on which the instant  
 2-43 offense for which the person was convicted and placed on community  
 2-44 supervision.

2-45 SECTION 3. Sections 49.09(e) and (f), Penal Code, are  
 2-46 repealed.

2-47 SECTION 4. The changes in law made by this Act apply only to  
 2-48 the penalty or the terms of community supervision for an offense  
 2-49 under Chapter 49, Penal Code, that is committed on or after the  
 2-50 effective date of this Act. The penalty and the terms of community  
 2-51 supervision for an offense under Chapter 49, Penal Code, that was  
 2-52 committed before the effective date of this Act are covered by the  
 2-53 law in effect when the offense was committed, and the former law is  
 2-54 continued in effect for that purpose. For purposes of this section,  
 2-55 an offense was committed before the effective date of this Act if  
 2-56 any element of the offense was committed before that date.

2-57 SECTION 5. This Act takes effect September 1, 2005.

2-58 \* \* \* \* \*